

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

FRED F. BROWN,

Petitioner,

v.

CITY OF EVERETT,

Respondent.

CASE No. 15-3-0018

FINAL DECISION AND ORDER

SYNOPSIS

The Petitioner challenged the City of Everett's adoption of its comprehensive plan update and zoning code amendments for the Everett Station Area alleging the methodology used in its land capacity analysis was improper and that the City had failed to accommodate growth targets. The Board concluded the Petitioner had failed to meet his burden of proof to show the City's action was clearly erroneous and dismissed the case.

I. THE CHALLENGED ACTION

The Growth Management Act (GMA) requires periodic reviews of county and city comprehensive plans to ensure land use and infrastructure provisions will accommodate the next twenty years of projected population growth. RCW 36.70A.130. The City of Everett (City) adopted Ordinance 3454-15 and 3456-15 to meet a mandated 2015 update deadline for Snohomish County¹ and its cities. Fred Brown petitioned for Board review of the Ordinances, alleging the City failed to provide sufficient population and employment capacity to meet its twenty-year target and that the City was required to obtain the explicit

¹ Adopted October 21, 2015.

1 approval of the Snohomish County Tomorrow steering committee for its land capacity
2 analysis methodology.

3 The Hearing on the Merits was convened on May 3, 2016, in Everett, Washington.
4 Present at the hearing were Board Members Margaret Pageler, William Roehl, and Cheryl
5 Pflug, Presiding Officer. The Petitioner, Fred F. Brown, appeared *pro se*. Andrew S. Lane
6 appeared on behalf of the City of Everett. Valerie Allard of Pennington Court Reporting
7 provided court reporting services.
8

9 10 **II. BOARD JURISDICTION**

11 The Board finds the Petition for Review was timely filed pursuant to RCW 36.70A
12 .290(2). The Board finds the Petitioner has standing to appear before the Board pursuant to
13 RCW 36.70A.280(2). The Board finds it has jurisdiction over the subject matter of the
14 Petition for Review pursuant to RCW 36.70A.280(1)(a).
15

16 **III. BURDEN OF PROOF**

17 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations
18 and amendments to them are presumed valid upon adoption.² This presumption creates a
19 high threshold for challengers as the burden is on the petitioner to demonstrate action taken
20 by the local jurisdiction is not in compliance with the Growth Management Act (GMA).³
21

22 The Board is charged with adjudicating GMA compliance and, when necessary,
23 invalidating noncompliant plans and development regulations.⁴ The scope of the Board's
24 review is limited to determining whether a local jurisdiction has achieved compliance with
25 the GMA only with respect to those issues presented in a timely petition for review.⁵ The
26 GMA directs that the Board, after full consideration of the petition, shall determine whether
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29 ² RCW 36.70A.320(1) provides: "[Except for the shoreline element of a comprehensive plan and applicable
30 development regulations] comprehensive plans and development regulations, and amendments thereto,
31 adopted under this chapter are presumed valid upon adoption."

32 ³ RCW 36.70A.320(2) provides: "[Except when city or county is subject to a Determination of Invalidity] the
burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
chapter is not in compliance with the requirements of this chapter."

⁴ RCW 36.70A.280, RCW 36.70A.302.

⁵ RCW 36.70A.290(1).

1 there is compliance with the requirements of the GMA.⁶ The Board shall find compliance
2 unless it determines the local jurisdiction's action is clearly erroneous in view of the entire
3 record before the Board and in light of the goals and requirements of the GMA.⁷ In order to
4 find the local jurisdiction's action clearly erroneous, the Board must be "left with the firm and
5 definite conviction that a mistake has been committed."⁸

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7 Thus, the burden is on the Petitioner to overcome the presumption of validity and
8 demonstrate the challenged actions taken by the City are clearly erroneous in light of the
9 goals and requirements of the GMA.

10 11 IV. PRELIMINARY MATTERS

12 Supplementation/Notice

13 Petitioner filed his first motion to supplement the record⁹ to which the City did not
14 object.¹⁰ The Board granted Petitioner's motion to supplement on February 22, 2016. In its
15 response brief,¹¹ the City moved to supplement the record with email correspondence.¹²
16 Petitioner filed a second motion to supplement the record¹³ requesting, essentially, that the
17 Board take official notice of Amended Ordinance No. 10-032¹⁴ and City of Everett
18 Resolution 6578.¹⁵ At the Hearing on the Merits, the parties agreed that they did not object
19 to the admission/notice of each other's requested documents and the Board ruled orally that
20 the parties could present their documents.
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22
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24 ⁶ RCW 36.70A.320(3).

25 ⁷ RCW 36.70A.320(3).

26 ⁸ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008) (Citing *Dept. of Ecology v. PUD*
27 *District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); *See also Swinomish Tribe v.*
28 *WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497-
98, 139 P.3d 1096 (2006).

29 ⁹ Petitioner's First Motion to Supplement the Record (February 11, 2016).

30 ¹⁰ Letter from City (February 17, 2016).

31 ¹¹ City of Everett's Response Brief (April 8, 2016) at 6.

32 ¹² Email correspondence between the City's Planning Director and Snohomish County's Principal
Demographer, Stephen Toy (March 16, 2016).

¹³ Petitioner's Second Motion to Supplement the Record (April 15, 2016).

¹⁴ An ordinance amending population and employment growth targets.

¹⁵ A resolution establishing preliminary 2035 growth targets.

1 **Record Correction**

2 The City filed a motion to dismiss on February 9, 2016, attaching, *inter alia*, Exhibit
3 14. Petitioner objected that the document referenced as Exhibit 14 was incorrect and
4 requested that the description of Exhibit 14 be changed to "Letter from Fred Brown to City
5 Council regarding CB1509-32 and CB1509-34 (Everett Station Area amendment) calling
6 into question City noncompliance with CPP DP-4." The City agreed and subsequently
7 withdrew its motion to dismiss.¹⁶
8

9 **Abandoned Issue**
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11 The Petitioner abandoned Issue 4.¹⁷
12

13 **V. ANALYSIS AND DISCUSSION**

14 *City's Action*

15 Ordinance 3454-15 is the City's comprehensive plan update required under RCW
16 36.70A.130, amending its comprehensive plan and zoning code to allow residential use in
17 the Everett Station Area.
18

19 *Petitioner's Objection*

20 The Petitioner asserts that Ordinance 3454-15 fails to provide sufficient population
21 and employment capacity as required by RCW 36.70A.115.¹⁸ He states that after initially
22 indicating it lacked that capacity, the City changed its methodology leading to a finding of
23 excess capacity.¹⁹ The essence of Petitioner's claim is that the City was precluded from
24 changing that methodology because a Countywide Planning Policy, CPP DP-4, required the
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28 ¹⁶ City Withdrawal of Motion to Dismiss (February 16, 2016).

29 ¹⁷ Legal Issue 4: Did the City of Everett fail to comply with the GMA because Ordinance 3456-15 does not
30 include Boarding Houses or Rooming Houses as outright permitted uses in the Everett Station Area in
31 violation of RCW 36.70A.020(4) goal to "*promote a variety of residential densities and housing types, and*
32 *encourage preservation of existing housing stock*?" – Abandoned. See Prehearing Brief filed March 29, 2016,
at 3.

¹⁸ Petitioner's Prehearing Brief (March 26, 2016) at 3-4.

¹⁹ Petitioner's Response Brief (April 15, 2016) at 3-4.

1 approval of the Snohomish County Tomorrow Steering Committee²⁰ which the City did not
2 obtain. Snohomish County Tomorrow is a coordinating council of local elected officials
3 established by the County and its cities pursuant to RCW 36.70A.210.²¹

4 The Petitioner's claims are encapsulated in his Issues 1-3.²² The Petitioner agreed
5 with the following assertion²³ made by the City in its response brief:²⁴

6 The sole question in this case is whether a Countywide Planning Policy
7 ("CPP") required the City to receive approval of its land capacity methodology
8 by the Snohomish County Tomorrow ("SCT") Steering Committee, because
9 the AEPCAC [the City's Land Capacity Analysis] utilizes different
10 assumptions than SCT's Buildable Lands Report ("BLR").²⁵

11 Although Petitioner emphasizes his claim that obtaining such approval was
12 required,²⁶ his basic, underlying claim is that the Ordinance fails to provide sufficient
13 capacity to accommodate allocated growth. While the City argues Petitioner abandoned
14 Issue 3 which raised the capacity question,²⁷ the Board notes Petitioner's opening brief
15 does refer to his basic assertion in the section directed at invalidity.²⁸ The sections of the
16 GMA alleged by the Petitioner to have been violated by the City include RCW 36.70A.210
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20 ²⁰ *Id.* at 2-3.

21 ²¹ See *John Postema v Snohomish County, et al.*, 85 Wn.App. 574, 922 P.2d 176 (1996) (concluding that SCT
22 does not possess governmental powers).

23 ²² 1. Did the City of Everett fail to comply with the GMA when it adopted Alternative Employment and
24 Population Capacity Assumptions and Calculations, which deviated from the land capacity analysis methods of
25 the SCBLR, without approval of the Snohomish County Tomorrow Steering Committee as required by CPP
26 DP- 4²² in violation of RCW 36.70A.210 and RCW 36.70A.215?

27 2. Did the City of Everett fail to comply with the process requirements of the GMA by failing to obtain SCT SC
28 approval for Everett's land capacity analysis methods, used in the AEPCAC, in violation of RCW 36.70A.100.

29 3. Did the City of Everett fail to comply with the GMA because the challenged Ordinances do not provide
30 adequate capacity to accommodate allocated housing and employment growth as required by RCW
31 36.70A.115?

32 ²³ "The Petitioner agrees. This is the sole question." Petitioner's Prehearing Response Brief (April 15, 2016) at

1. ²⁴ City of Everett's Response Brief (April 8, 2016) at 1.

²⁵ AEPCAC refers to Alternative Employment and Population Capacity Assumptions.

²⁶ Petitioner's Prehearing Brief (March 26, 2016) at 2.

²⁷ City of Everett's Response Brief (April 8, 2016) at 3.

²⁸ Petitioner's Prehearing Brief at 3-4 reads in pertinent part:

With the publication of the AEPAC a 32,700 land capacity shortfall changed to a 15,000 land
capacity surplus with no significant change to the Everett's zoning regulations. [sic]

1 and RCW 36.70A.215 (Issue 1), RCW 36.70A.100 (Issue 2) and, RCW 36.70A.115 (Issue
2 3). In his opening brief, the Petitioner combined argument on Issues 1 through 3.

3
4 *Discussion*

5 RCW 36.70A.115 requires counties and their cities to accommodate the Office of
6 Financial Management's twenty year population and employment growth projection by
7 including "sufficient capacity of land suitable for development".²⁹ In this matter, two of the
8 steps in achieving population accommodation are the development of a Buildable Lands
9 Report (BLR) and a Land Capacity Analysis (LCA).

10
11 A Buildable Lands Report provides data on urban growth in a county for the
12 preceding five years. RCW 36.70A.215. As the Board observed in *Friends of Skagit County*
13 *v. Skagit County*:

14 The primary purpose of the BLR is to review whether a county and its cities
15 are achieving urban densities within the UGAs by comparing growth and
16 development assumptions, targets, and objectives set forth in the countywide
17 planning policies and comprehensive plans with actual growth and
18 development that has occurred over the past five years in the county and its
19 cities. The **BLR is retrospective** – looking back over the past five years of
20 development to see how well the county and its cities have performed. The
21 **information developed through the BLR provides important information**
22 **for updating and, perhaps, revising a County's Land Capacity**
23 **Analysis.**³⁰

24 A Land Capacity Analysis is prepared following the development of the BLR review
25 and addresses a new population forecast. RCW 36.70A.110(2); RCW 36.70A.130(1)(c). In
26 contrast to the retrospective BLR:

27 ²⁹ RCW 36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity
28 for development. Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure
29 that, taken collectively, adoption of and amendments to their comprehensive plans and/or development
30 regulations provide sufficient capacity of land suitable for development within their jurisdictions to
31 accommodate their allocated housing and employment growth, including the accommodation of, as
32 appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related
to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year
population forecast from the office of financial management.

³⁰ *Friends of Skagit County, et al v. Skagit County*, GMHB No. 07-2-0025c, Order on Motions for
Reconsideration (June 18, 2008) at 16. Emphasis added.

1 . . . **the LCA is prospective** – looking forward over the coming 20 years to
2 see if there is enough land within the UGA to accommodate the growth that
3 has been allocated to the area.³¹

4 Underlying Petitioner's claims in this matter is a basic GMA concept: a jurisdiction's
5 need to concentrate growth in urban areas. Achievement of that goal requires coordination
6 among a county and its municipalities, including coordination in regards to both a BLR and a
7 LCA. One of the coordinating methods is the GMA requirement to adopt countywide
8 planning policies (CPPs).³² Coordination in Snohomish County is achieved, in part, by use
9 of the Snohomish County Tomorrow process created pursuant to the CPPs:
10

11 The County-wide Planning Policies of Snohomish County and cities . . .
12 established a multi-jurisdictional **coordination process for determining**
13 **population projections and population allocations to each jurisdiction** . . .
14 . . . SCT is a cooperative and collaborative public inter-jurisdictional growth
15 management advisory forum consisting of representatives from the county
16 and each of the cities, as well as from the Tulalip Tribe. Authorized by RCW
17 36.70A.215 and the CPPs, **Snohomish County and cities utilize the**
18 **Buildable Lands Program to track densities and types of development**
19 **occurring in the jurisdictions, with the planned densities and types of**
20 **development adopted in local comprehensive plans.** The Buildable Lands
21 Program enables the county and cities to initiate policy techniques to increase
22 consistency between actual densities and types of development with planned
23 densities and development.³³
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27 ³¹ *Id.* at 15. (Emphasis added)

28 ³² RCW 36.70A.210(1) reads in pertinent part:

29 The legislature recognizes that counties are regional governments within their boundaries,
30 and cities are primary providers of urban governmental services within urban growth areas.
31 For the purposes of this section, a "countywide planning policy" is a written policy statement
32 or statements used solely for establishing a countywide framework from which county and
city comprehensive plans are developed and adopted pursuant to this chapter. This
framework shall ensure that city and county comprehensive plans are consistent as required
in RCW 36.70A.100.

³³ Urban Growth Area Guidebook: Reviewing, Updating and Implementing Your Urban Growth Area,
Washington Department of Commerce (November 2012) p. 75. (Emphasis added)

1 **Snohomish County Tomorrow Steering Committee Approval**³⁴

2 The Petitioner's argument is that two different "land capacity analysis methods" were
3 employed, one for the Buildable Lands Report and another for the Land Capacity Analysis.
4 He contends the City failed to receive approval for the use of the latter, alleging approval
5 was required by a Countywide Planning Policy, CPP DP-4. He argues the City was required
6 to use the same methodology for the LCA as it used in preparing the BLR unless a different
7 one was approved. CPP DP-4, the one Petitioner argues was not heeded by the City,
8 provides:
9

10 The County and cities shall use consistent land capacity analysis methods as
11 approved by the Snohomish County Tomorrow Steering Committee.

12 The City does not dispute the lack of approval but rather takes the position that CPP
13 DP-4 did not require it and that it has never been interpreted to require it.³⁵ The City
14 contends that the two documents, the BLR and the LCA, represent different analyses.
15

16 Contrary to Petitioner's contention, the Board finds that the language of CPP DP-4
17 does not state that the same methodology must be used in the BLR and the LCA. Rather, it
18 states that the "land capacity analysis methods" used by the County and its cities must be
19 *consistent*.

20 The Board agrees with the City's observation that "A BLR does not take into account
21 'expected changes in future densities caused by market and policy factors'".³⁶ The BLR
22 provides an historical picture of the population densities and employment actually achieved
23 in relation to adopted population and employment allocations. It constitutes a relatively
24 objective analysis. The LCA is a much more subjective document. It anticipates future
25 development activity, including assumed economic climates and factors, and any policy or
26

27
28 ³⁴ Legal Issue 1: Did the City of Everett fail to comply with the GMA when it adopted Alternative Employment
29 and Population Capacity Assumptions and Calculations, which deviated from the land capacity analysis
30 methods of the SCBLR, without approval of the Snohomish County Tomorrow Steering Committee as required
31 by CPP DP-4 in violation of RCW 36.70A.210 and RCW 36.70A.215?

32 Legal Issue 2: Did the City of Everett fail to comply with the process requirements of the GMA by failing to
obtain SCT SC approval for Everett's land capacity analysis methods, used in the AEPCAC, in violation of
RCW 36.70A.100?

³⁵ City of Everett's Response Brief (April 8, 2016) at 5-6.

³⁶ *Id.* at 5.

1 regulatory changes which may affect development. Of necessity, the LCA must include
2 assumptions and extrapolations as that document looks 20 years into the future. Although
3 Petitioner may disagree, the need for an LCA is based on an understanding that the
4 interaction of multiple variables means that what happened in the past is not a reliable
5 indicator of future development activity. As the Department of Commerce explains:

6 For each zone and planned land use designation, **jurisdictions will develop**
7 **assumed densities to be used in the Land Supply Analysis.** These
8 assumptions are meant to be reasonable estimates of densities to expect
9 over the long-term planning period. Assumed densities will only be used for
10 the purposes of the LCA and will not be used to guide or influence other
11 County or local land use policy decisions. In determining assumed densities,
12 **jurisdictions will consider the following range of inputs: recent achieved**
13 **densities; County and city land use goals and policies; local knowledge**
14 **of development plans and pending development; and any other local**
15 **market or policy conditions that are likely to impact future development**
16 **densities.** The County will work with city staff to ensure that reasonable
17 assumed densities are developed. The determination of assumed densities in
18 each zone and planned land use area in each jurisdiction is expected to be an
19 iterative and collaborative process between the County and cities. **The**
20 **process will be challenging because each jurisdiction will have its own**
21 **set of issues depending on the complexity of its zoning code, other land**
22 **use policies, and market conditions.** In addition, the theoretical densities
23 allowed in an area must be balanced with potentially very different achieved
24 densities in those same zones. Although **establishing one common method**
25 **for determining assumed densities is not possible, the underlying**
26 **principle in this process is to develop assumed densities that are**
27 **reasonable given recent development patterns and expected changes in**
28 **future densities caused by market and policy factors.**³⁷

29 Further, the Board cannot agree with Petitioner's assertion that the CPP mandates
30 express approval of Everett's LCA methodology by the SCT. The Board's conclusion is
31 based on the language of CPP DP-4 itself as well as the significant differences between the
32 historical review represented by a BLR and the prognostications necessarily required in
crafting a LCA. The future densities assumed to be achieved in each jurisdiction will
necessarily vary with different policies, goals and market conditions. As the Department of

³⁷ Urban Growth Area Guidebook: Reviewing, Updating and Implementing Your Urban Growth Area, Washington Department of Commerce (November 2012) p. 103.

Commerce observed in its Guidebook: “one common method for determining assumed densities is not possible”; rather “the underlying principle in this process is to develop assumed densities that are reasonable”.

The Board concludes that Petitioner has failed to establish violations of RCW 36.70A.210, RCW 36.70A.215, or RCW 36.70A.100 due to a failure to obtain approval of the Snohomish County Tomorrow Steering Committee. Issues 1 and 2 are **dismissed**.

Accommodating Allocated Population³⁸

The Petitioner argues that the Ordinances fail to provide sufficient capacity to accommodate allocated growth. He observes that Everett was allocated a population increase of 61,700 to be accommodated by 2035. The BLR's retrospective analysis, which does not account for changes in the economy or development policies, indicates there would be a shortfall in land capacity of 32,700. Petitioner complains that, despite "meager growth" between the adoption of the BLR (June, 2013) and the date of the LCA (August, 2014), the LCA concluded that the City had more than adequate capacity.

As explained above, the LCA looks forward 20 years. It incorporates anticipated changes in the market as well as the impact of various policy changes. The Alternative Employment and Population Capacity Assumptions (the City's LCA) acknowledges that it will need to “bend the trends” in order to accommodate allocated population.³⁹ However, a reading of that document sets out various assumptions and steps the City has taken or plans to take in order to accommodate the population allocation.⁴⁰

- An assumption that two light rail stations will be completed within the City during the 20 year planning period. Location of the stations would likely result in significantly higher densities.

³⁸ Legal Issue 3: Did the City of Everett fail to comply with the GMA because the challenged Ordinances do not provide adequate capacity to accommodate allocated housing and employment growth as required by RCW 36.70A.115?

³⁹ Exhibit 83: Alternative Employment and Population Capacity Assumptions and Calculations, Background Report for 2015 Update to the City of Everett Comprehensive Plan (September 2014), p. 3.

⁴⁰ *Id.*, pp. 3-6.

- Development of subarea plans, a Downtown Streetscape Plan, rezones, and zoning code amendments.
- Targeted investments by the City and others in various core areas of the city and arterials, including arts and cultural amenities and other improvements.
- The City's Multifamily Housing Property Tax Exemption.
- Expansion of the City's Metropolitan Center, including the allowance of denser zoning.
- An increase in housing to accommodate students attending a consortium of colleges located at Everett Community College.
- The completed, as well as anticipated, cleanup of contaminated properties which will allow for significant redevelopment.
- Pending consideration of allowing detached accessory dwelling units.

These are the types of factors appropriately included in a LCA.⁴¹ "Assumptions about future development density are critical elements of the Land Capacity Analysis because they are needed to convert net developable area (acres) into future population and employment capacity."⁴²

The City included the following finding in Ordinance 3454-15: "Whereas, the area within the existing City limits has a capacity under the Preferred Alternative for a population of approximately 180,000 by 2035, more than sufficient to meet the Conditional target of 165,000 ...".⁴³ In rebuttal, the Petitioner's argument that the City cannot accommodate allocated population merely consists of conclusory statements that are insufficient to meet his burden of proof.

⁴¹ Urban Growth Area Guidebook: Reviewing, Updating and Implementing Your Urban Growth Area, Washington Department of Commerce (November 2012) p.103 explains:

In determining assumed densities, jurisdictions will consider the following range of inputs: recent achieved densities; County and city land use goals and policies; local knowledge of development plans and pending development; and any other local market or policy conditions that are likely to impact future development densities.

⁴² *Strahm v. Snohomish County*, Case No. 15-3-0004, Final Decision and Order (January 19, 2016) at 13; See also Urban Growth Area Guidebook, p. 10.

⁴³ Ordinance 3454-15 at 3.

1 Further, the Board notes that if Petitioner's pessimism in regards to the assumptions
2 built into the LCA proves to be well-founded, the City's (and Snohomish County's) iterative
3 review and evaluation program (the SCT process) is designed to insure anticipated urban
4 densities are achieved. RCW 36.70A.215(1)(b), (3) and (4) provide that if a comparison of
5 actual growth and development with development assumptions and targets indicates those
6 targets are not being met, "reasonable measures" will need to be identified to adjust the
7 plan so as to comply with GMA requirements.⁴⁴

8
9 **The Board concludes** that Petitioner has failed to establish violations of RCW
10 36.70A.115. Issue 3 is **dismissed**.

11
12 ⁴⁴ RCW 36.70A.215, in part: (1) Subject to the limitations in subsection (7) of this section, a county shall adopt,
13 in consultation with its cities, countywide planning policies to establish a review and evaluation program. This
14 program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In
15 developing and implementing the review and evaluation program required by this section, the county and its
16 cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review
17 and evaluation program shall be to:

18 (b) Identify reasonable measures, other than adjusting urban growth areas, that will be
19 taken to comply with the requirements of this chapter.

20 (3) At a minimum, the evaluation component of the program required by subsection (1) of this
21 section shall:

22 (a) Determine whether there is sufficient suitable land to accommodate the countywide
23 population projection established for the county pursuant to RCW 43.62.035 and the
24 subsequent population allocations within the county and between the county and its cities
25 and the requirements of RCW 36.70A.110;

26 (b) Determine the actual density of housing that has been constructed and the actual
27 amount of land developed for commercial and industrial uses within the urban growth
28 area since the adoption of a comprehensive plan under this chapter or since the last
29 periodic evaluation as required by subsection (1) of this section; and

30 (c) Based on the actual density of development as determined under (b) of this
31 subsection, review commercial, industrial, and housing needs by type and density range
32 to determine the amount of land needed for commercial, industrial, and housing for the
remaining portion of the twenty-year planning period used in the most recently adopted
comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency
between what has occurred since the adoption of the countywide planning policies and the
county and city comprehensive plans and development regulations and what was envisioned
in those policies and plans and the planning goals and the requirements of this chapter, as
the inconsistency relates to the evaluation factors specified in subsection (3) of this section,
the county and its cities shall adopt and implement measures that are reasonably likely to
increase consistency during the subsequent five-year period. If necessary, a county, in
consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to
countywide planning policies to increase consistency. The county and its cities shall annually
monitor the measures adopted under this subsection to determine their effect and may revise
or rescind them as appropriate.

1 **Invalidity**⁴⁵

2 The Petitioner's Issue 4 requests that the Board find the challenged ordinances
3 invalid. A necessary prerequisite to a finding of invalidity is a finding of noncompliance.⁴⁶ In
4 this matter, no such finding has been made. Consequently, invalidity is inappropriate.
5 Issue 4 is **dismissed**.
6

7 **VI. ORDER**

8 Based upon review of the Petition for Review, the briefs, argument and exhibits
9 presented by the parties, the Growth Management Act, prior Board orders and case law,
10 and having deliberated on the matter, the Board ORDERS:
11

- 12 • Petitioner Fred F. Brown has failed to carry his burden of demonstrating the City
13 of Everett's adoption of Ordinances 3454-15 and 3456-15 violates RCW
14 36.70A.210, RCW 36.70A.215, RCW 36.70A.100 or RCW 36.70A.115.
15 • The petition for review is dismissed and Case No. 15-3-0018 is closed.
16

17 DATED this 7th day of June, 2016.
18

19 _____
20 Cheryl Pflug, Presiding Officer

21 _____
22 Margaret Pageler, Board Member

23 _____
24 William Roehl, Board Member
25
26
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28 _____
29 ⁴⁵ Legal Issue 4: Did the City of Everett fail to comply with the GMA because Ordinance 3456-15 does not
30 include Boarding Houses or Rooming Houses as outright permitted uses in the Everett Station Area in
31 violation of RCW 36.70A.020(4) goal to "*promote a variety of residential densities and housing types, and*
32 *encourage preservation of existing housing stock?*"?

⁴⁶ RCW 36.70A.302, in part: (1) The board may determine that part or all of a comprehensive plan or
development regulations are invalid if the board:

- (a) Makes a finding of noncompliance and issues an order of remand under RCW
36.70A.300;

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.⁴⁷

⁴⁷ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.